

Application No.: 10/674,653
Dated: November 30, 2007
Response

REMARKS/ARGUMENTS

The Examiner has subjected the present application to yet another restriction requirement under 35 USC §121, identifying the following claim groups: Group I, claims 4 through 6, 8, 38 through 42 and 46 through 48, drawn to a tissue approximation device with a second surface rotatably coupled to the distal end of each of the elongate arms by a ball and socket connector, classified in class 606, subclass 150; and Group II, claims 14, 22, 27 through 30, 36, 37, 49 and 50, drawn to a tissue approximation device with the connector of the adhesive pad is a rod and sleeve, classified in class 606, subclass 150. Favorable action is respectfully solicited in view of the following.

Restriction Requirement

The Examiner has subjected the present application to a restriction requirement under 35 USC §121 by identifying the following two claim groups:

Group I. Claims 4 through 6, 8, 38 through 42 and 46 through 48, drawn to a tissue approximation device with a second surface rotatably coupled to the distal end of each of the elongate arms by a ball and socket connector, classified in class 606, subclass 150; and Group II; and

Group II. Claims 14, 22, 27 through 30, 36, 37, 49 and 50, drawn to a tissue approximation device with the connector of the adhesive pad is a rod and sleeve, classified in class 606, subclass 150.

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The Examiner contends that restriction is proper because the inventions of Groups I and II are distinct, taking the position that:

Inventions in this relationship are distinct if it can be shown that (1) Inventions I and II are directed to related tissue approximation devices. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the invention as claimed [as] invention I is not capable of being used with invention II. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants. Official Action of May 10, 2006, page 2, line 12 – page 3, line 3.

The Applicants provisionally elect the Group I claims and respectfully traverse this restriction requirement.

Applicants respectfully submit that the claims of the designated groups have not acquired a separate and distinct status in the art for examination purposes, particularly in view of the fact that they are classified within the same art classification of the U. S. Patent and Trademark Office. Art very relevant to the patentability of the Group II tissue approximation device will necessarily be found in the same art class assigned to the Group I tissue approximation device.

It is further submitted that an important advantage in pursuing just one application encompassing all claim groups is that the examination work of the Patent and Trademark Office would be simplified, insofar as duplication of searching effort would be eliminated.

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It is respectfully submitted that the Examiner's reasoning for a further restriction requirement is not fully understood as applicants' claims have already been examined including searching and substantive analysis as to their merits in the prior Office Actions. Since their status did not previously pose a serious burden on examination, it is unclear why they now pose a serious burden on examination.

In view of the foregoing remarks, it is respectfully requested that the Examiner reconsider and withdraw the requirement for restriction and allow all pending claims to be prosecuted in the same application, as directed by MPEP §803. Notwithstanding the above arguments and the request for reconsideration, in the event that the requirement is made final, and in order to comply with 37 C.F.R. 1.143, the Applicants provisionally elect claims 4 through 6, 8, 38 through 42 and 46 through 48 (Group I), holding claims 14, 22, 27 through 30, 36, 37, 49 and 50 (Group II) in abeyance under the provisions of 37 C.F.R. 1.142(b), until the final disposition of the elected claims.

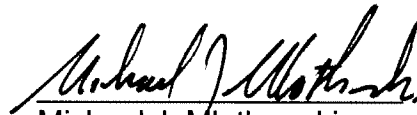
It is further requested that all of the withdrawn claims be rejoined and examined upon the indication of allowable subject matter.

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Furthermore, it is respectfully submitted that the present claims are in condition for allowance. Prompt notification of allowance is respectfully solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Michael J. Mlotkowski".

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